

AMENDED IN ASSEMBLY AUGUST 7, 2014

AMENDED IN ASSEMBLY JULY 3, 2014

AMENDED IN ASSEMBLY APRIL 2, 2014

AMENDED IN ASSEMBLY MARCH 5, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1560

Introduced by Assembly Member Quirk-Silva
(Principal coauthors: Assembly Members Gorell, Linder,
Muratsuchi, Salas, and Wilk)

January 29, 2014

An act to amend Sections 17059.2 and 23689 of the Revenue and Taxation Code, relating to economic development, ~~and declaring the urgency thereof, to take effect immediately~~ *to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1560, as amended, Quirk-Silva. Income taxes: credits: California Competes Tax Credit.

Existing law allows a credit against the taxes imposed under the Corporation Tax Law and the Personal Income Tax Law for each taxable year beginning on or after January 1, 2014, and before January 1, 2025, in an amount as provided in a written agreement between the Governor's Office of Business and Economic Development and the taxpayer, agreed upon by the California Competes Tax Credit Committee, and based on specified factors, including the number of jobs the taxpayer will create or retain in the state and the amount of investment in the state by the

taxpayer. Existing law limits the aggregate amount of credits allocated to taxpayers to a specified sum per fiscal year.

~~This bill would reduce this aggregate amount of credits that may be allocated to taxpayers per fiscal year by the phased aggregate amount allowed to taxpayers pursuant to the credit proposed by Assembly Bill 2389 with regard to the manufacture of a new advanced strategic aircraft, and would also authorize the Director of Finance to increase the aggregate amount of the economic development credits that may be allocated to taxpayers each year by \$25 million per year through 2019. These provisions would become operative only if AB 2389 is enacted and becomes effective on or before January 1, 2015.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17059.2 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 17059.2. (a) (1) For each taxable year beginning on and after
- 4 January 1, 2014, and before January 1, 2025, there shall be allowed
- 5 as a credit against the “net tax,” as defined in Section 17039, an
- 6 amount as determined by the committee pursuant to paragraph (2)
- 7 and approved pursuant to Section 18410.2.
- 8 (2) The credit under this section shall be allocated by GO-Biz
- 9 with respect to the 2013–14 fiscal year through and including the
- 10 2017–18 fiscal year. The amount of credit allocated to a taxpayer
- 11 with respect to a fiscal year pursuant to this section shall be as set
- 12 forth in a written agreement between GO-Biz and the taxpayer and
- 13 shall be based on the following factors:
- 14 (A) The number of jobs the taxpayer will create or retain in this
- 15 state.
- 16 (B) The compensation paid or proposed to be paid by the
- 17 taxpayer to its employees, including wages and fringe benefits.
- 18 (C) The amount of investment in this state by the taxpayer.
- 19 (D) The extent of unemployment or poverty in the area
- 20 according to the United States Census in which the taxpayer’s
- 21 project or business is proposed or located.

1 (E) The incentives available to the taxpayer in this state,
2 including incentives from the state, local government, and other
3 entities.

4 (F) The incentives available to the taxpayer in other states.

5 (G) The duration of the proposed project and the duration the
6 taxpayer commits to remain in this state.

7 (H) The overall economic impact in this state of the taxpayer's
8 project or business.

9 (I) The strategic importance of the taxpayer's project or business
10 to the state, region, or locality.

11 (J) The opportunity for future growth and expansion in this state
12 by the taxpayer's business.

13 (K) The extent to which the anticipated benefit to the state
14 exceeds the projected benefit to the taxpayer from the tax credit.

15 (3) The written agreement entered into pursuant to paragraph
16 (2) shall include:

17 (A) Terms and conditions that include the taxable year or years
18 for which the credit allocated shall be allowed, a minimum
19 compensation level, and a minimum job retention period.

20 (B) Provisions indicating whether the credit is to be allocated
21 in full upon approval or in increments based on mutually agreed
22 upon milestones when satisfactorily met by the taxpayer.

23 (C) Provisions that allow the committee to recapture the credit,
24 in whole or in part, if the taxpayer fails to fulfill the terms and
25 conditions of the written agreement.

26 (b) For purposes of this section:

27 (1) "Committee" means the California Competes Tax Credit
28 Committee established pursuant to Section 18410.2.

29 (2) "GO-Biz" means the Governor's Office of Business and
30 Economic Development.

31 (c) For purposes of this section, GO-Biz shall do the following:

32 (1) Give priority to a taxpayer whose project or business is
33 located or proposed to be located in an area of high unemployment
34 or poverty.

35 (2) Negotiate with a taxpayer the terms and conditions of
36 proposed written agreements that provide the credit allowed
37 pursuant to this section to a taxpayer.

38 (3) Provide the negotiated written agreement to the committee
39 for its approval pursuant to Section 18410.2.

1 (4) Inform the Franchise Tax Board of the terms and conditions
2 of the written agreement upon approval of the written agreement
3 by the committee.

4 (5) Inform the Franchise Tax Board of any recapture, in whole
5 or in part, of a previously allocated credit upon approval of the
6 recapture by the committee.

7 (6) Post on its Internet Web site all of the following:

8 (A) The name of each taxpayer allocated a credit pursuant to
9 this section.

10 (B) The estimated amount of the investment by each taxpayer.

11 (C) The estimated number of jobs created or retained.

12 (D) The amount of the credit allocated to the taxpayer.

13 (E) The amount of the credit recaptured from the taxpayer, if
14 applicable.

15 (d) For purposes of this section, the Franchise Tax Board shall
16 do all of the following:

17 (1) (A) Except as provided in subparagraph (B), review the
18 books and records of all taxpayers allocated a credit pursuant to
19 this section to ensure compliance with the terms and conditions
20 of the written agreement between the taxpayer and GO-Biz.

21 (B) In the case of a taxpayer that is a “small business,” as
22 defined in Section 17053.73, review the books and records of the
23 taxpayer allocated a credit pursuant to this section to ensure
24 compliance with the terms and conditions of the written agreement
25 between the taxpayer and GO-Biz when, in the sole discretion of
26 the Franchise Tax Board, a review of those books and records is
27 appropriate or necessary in the best interests of the state.

28 (2) Notwithstanding Section 19542:

29 (A) Notify GO-Biz of a possible breach of the written agreement
30 by a taxpayer and provide detailed information regarding the basis
31 for that determination.

32 (B) Provide information to GO-Biz with respect to whether a
33 taxpayer is a “small business,” as defined in Section 17053.73.

34 (e) In the case where the credit allowed under this section
35 exceeds the “net tax,” as defined in Section 17039, for a taxable
36 year, the excess credit may be carried over to reduce the “net tax”
37 in the following taxable year, and succeeding five taxable years,
38 if necessary, until the credit has been exhausted.

39 (f) Any recapture, in whole or in part, of a credit approved by
40 the committee pursuant to Section 18410.2 shall be treated as a

1 mathematical error appearing on the return. Any amount of tax
2 resulting from that recapture shall be assessed by the Franchise
3 Tax Board in the same manner as provided by Section 19051. The
4 amount of tax resulting from the recapture shall be added to the
5 tax otherwise due by the taxpayer for the taxable year in which
6 the committee's recapture determination occurred.

7 (g) (1) The aggregate amount of credit that may be allocated
8 in any fiscal year pursuant to this section and Section 23689 shall
9 be an amount equal to the sum of subparagraphs (A), (B), and (C),
10 less the amount specified in subparagraphs (D) and ~~(E): (E), and~~
11 *plus the amount specified in subparagraph (F):*

12 (A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal
13 year, one hundred fifty million dollars (\$150,000,000) for the
14 2014–15 fiscal year, and two hundred million dollars
15 (\$200,000,000) for each fiscal year from 2015–16 to 2017–18,
16 inclusive.

17 (B) The unallocated credit amount, if any, from the preceding
18 fiscal year.

19 (C) The amount of any previously allocated credits that have
20 been recaptured.

21 (D) The amount estimated by the Director of Finance, in
22 consultation with the Franchise Tax Board and the State Board of
23 Equalization, to be necessary to limit the aggregation of the
24 estimated amount of exemptions claimed pursuant to Section
25 6377.1 and of the amounts estimated to be claimed pursuant to
26 this section and Sections 17053.73, 23626, and 23689 to no more
27 than seven hundred fifty million dollars (\$750,000,000) for either
28 the current fiscal year or the next fiscal year.

29 (i) The Director of Finance shall notify the Chairperson of the
30 Joint Legislative Budget Committee of the estimated annual
31 allocation authorized by this paragraph. Any allocation pursuant
32 to these provisions shall be made no sooner than 30 days after
33 written notification has been provided to the Chairperson of the
34 Joint Legislative Budget Committee and the chairpersons of the
35 committees of each house of the Legislature that consider
36 appropriation, or not sooner than whatever lesser time the
37 Chairperson of the Joint Legislative Budget Committee, or his or
38 her designee, may determine.

39 (ii) In no event shall the amount estimated in this subparagraph
40 be less than zero dollars (\$0).

1 (E) (i) For the 2015–16 fiscal year and each fiscal year
2 thereafter, the aggregate amount of credit that may be allocated
3 pursuant to this section and Section 23689 shall be reduced by the
4 amount of credit allowed to all qualified taxpayers pursuant to
5 subparagraph (A) or subparagraph (B) of paragraph (1) of
6 subdivision (c) of Section 23636.

7 (ii) If the amount available per fiscal year pursuant to this section
8 and Section 23689 is less than the aggregate amount of credit
9 allowed to qualified taxpayers pursuant to subparagraph (A) or
10 subparagraph (B) of paragraph (1) of subdivision (c) of Section
11 23636, the aggregate amount allowed pursuant to Section 23636
12 shall not be reduced and, in addition to the reduction required by
13 clause (i), the aggregate amount of credit that may be allocated
14 pursuant to this section and Section 23689 for the next fiscal year
15 shall be reduced by the amount of that deficit.

16 (iii) It is the intent of the Legislature that the reductions specified
17 in this subparagraph of the aggregate amount of credit that may
18 be allocated pursuant to this section and Section 23689 shall
19 continue if the repeal dates of the credits allowed by this section
20 and Section 23689 are removed or extended.

21 *(F) In addition to the other amounts determined pursuant this*
22 *paragraph, the Director of Finance may increase the aggregate*
23 *amount by up to twenty-five million dollars (\$25,000,000) per year*
24 *through 2019. The amount of any increase made pursuant to this*
25 *subparagraph, when combined with any increase made pursuant*
26 *to subparagraph (F) of paragraph (1) of subdivision (g) of Section*
27 *23689, shall not exceed twenty-five million dollars (\$25,000,000)*
28 *per year through 2019.*

29 *(G) It is the intent of the Legislature that the Director of Finance*
30 *increase the aggregate amount under subparagraph (F) in order*
31 *to mitigate the reduction of the amount available due to the credit*
32 *allowed to all qualified taxpayers pursuant to subparagraph (A)*
33 *or (B) of paragraph (1) of subdivision (c) of Section 23636.*

34 (2) Each fiscal year, 25 percent of the aggregate amount of the
35 credit that may be allocated pursuant to this section and Section
36 23689 shall be reserved for small business, as defined in Section
37 17053.73 or 23626.

38 (3) Each fiscal year, no more than 20 percent of the aggregate
39 amount of the credit that may be allocated pursuant to this section
40 shall be allocated to any one taxpayer.

1 (h) GO-Biz may prescribe rules and regulations as necessary to
2 carry out the purposes of this section. Any rule or regulation
3 prescribed pursuant to this section may be by adoption of an
4 emergency regulation in accordance with Chapter 3.5 (commencing
5 with Section 11340) of Part 1 of Division 3 of Title 2 of the
6 Government Code.

7 (i) A written agreement between GO-Biz and a taxpayer with
8 respect to the credit authorized by this section shall comply with
9 existing law on the date the agreement is executed.

10 (j) (1) Upon the effective date of this section, the Department
11 of Finance shall estimate the total dollar amount of credits that
12 will be claimed under this section with respect to each fiscal year
13 from the 2013–14 fiscal year to the 2024–25 fiscal year, inclusive.

14 (2) The Franchise Tax Board shall annually provide to the Joint
15 Legislative Budget Committee, by no later than March 1, a report
16 of the total dollar amount of the credits claimed under this section
17 with respect to the relevant fiscal year. The report shall compare
18 the total dollar amount of credits claimed under this section with
19 respect to that fiscal year with the department’s estimate with
20 respect to that same fiscal year. If the total dollar amount of credits
21 claimed for the fiscal year is less than the estimate for that fiscal
22 year, the report shall identify options for increasing annual claims
23 of the credit so as to meet estimated amounts.

24 (k) This section is repealed on December 1, 2025.

25 *SEC. 2. Section 23689 of the Revenue and Taxation Code is*
26 *amended to read:*

27 23689. (a) (1) For each taxable year beginning on and after
28 January 1, 2014, and before January 1, 2025, there shall be allowed
29 as a credit against the “tax,” as defined in Section 23036, an amount
30 as determined by the committee pursuant to paragraph (2) and
31 approved pursuant to Section 18410.2.

32 (2) The credit under this section shall be allocated by GO-Biz
33 with respect to the 2013–14 fiscal year through and including the
34 2017–18 fiscal year. The amount of credit allocated to a taxpayer
35 with respect to a fiscal year pursuant to this section shall be as set
36 forth in a written agreement between GO-Biz and the taxpayer and
37 shall be based on the following factors:

38 (A) The number of jobs the taxpayer will create or retain in this
39 state.

1 (B) The compensation paid or proposed to be paid by the
2 taxpayer to its employees, including wages and fringe benefits.

3 (C) The amount of investment in this state by the taxpayer.

4 (D) The extent of unemployment or poverty in the area
5 according to the United States Census in which the taxpayer's
6 project or business is proposed or located.

7 (E) The incentives available to the taxpayer in the state,
8 including incentives from the state, local government and other
9 entities.

10 (F) The incentives available to the taxpayer in other states.

11 (G) The duration of the proposed project and the duration the
12 taxpayer commits to remain in this state.

13 (H) The overall economic impact in this state of the taxpayer's
14 project or business.

15 (I) The strategic importance of the taxpayer's project or business
16 to the state, region, or locality.

17 (J) The opportunity for future growth and expansion in this state
18 by the taxpayer's business.

19 (K) The extent to which the anticipated benefit to the state
20 exceeds the projected benefit to the taxpayer from the tax credit.

21 (3) The written agreement entered into pursuant to paragraph
22 (2) shall include:

23 (A) Terms and conditions that include the taxable year or years
24 for which the credit allocated shall be allowed, a minimum
25 compensation level, and a minimum job retention period.

26 (B) Provisions indicating whether the credit is to be allocated
27 in full upon approval or in increments based on mutually agreed
28 upon milestones when satisfactorily met by the taxpayer.

29 (C) Provisions that allow the committee to recapture the credit,
30 in whole or in part, if the taxpayer fails to fulfill the terms and
31 conditions of the written agreement.

32 (b) For purposes of this section:

33 (1) "Committee" means the California Competes Tax Credit
34 Committee established pursuant to Section 18410.2.

35 (2) "GO-Biz" means the Governor's Office of Business and
36 Economic Development.

37 (c) For purposes of this section, GO-Biz shall do the following:

38 (1) Give priority to a taxpayer whose project or business is
39 located or proposed to be located in an area of high unemployment
40 or poverty.

1 (2) Negotiate with a taxpayer the terms and conditions of
2 proposed written agreements that provide the credit allowed
3 pursuant to this section to a taxpayer.

4 (3) Provide the negotiated written agreement to the committee
5 for its approval pursuant to Section 18410.2.

6 (4) Inform the Franchise Tax Board of the terms and conditions
7 of the written agreement upon approval of the written agreement
8 by the committee.

9 (5) Inform the Franchise Tax Board of any recapture, in whole
10 or in part, of a previously allocated credit upon approval of the
11 recapture by the committee.

12 (6) Post on its Internet Web site all of the following:

13 (A) The name of each taxpayer allocated a credit pursuant to
14 this section.

15 (B) The estimated amount of the investment by each taxpayer.

16 (C) The estimated number of jobs created or retained.

17 (D) The amount of the credit allocated to the taxpayer.

18 (E) The amount of the credit recaptured from the taxpayer, if
19 applicable.

20 (d) For purposes of this section, the Franchise Tax Board shall
21 do all of the following:

22 (1) (A) Except as provided in subparagraph (B), review the
23 books and records of all taxpayers allocated a credit pursuant to
24 this section to ensure compliance with the terms and conditions
25 of the written agreement between the taxpayer and GO-Biz.

26 (B) In the case of a taxpayer that is a “small business,” as
27 defined in Section 23626, review the books and records of the
28 taxpayer allocated a credit pursuant to this section to ensure
29 compliance with the terms and conditions of the written agreement
30 between the taxpayers and GO-Biz when, in the sole discretion of
31 the Franchise Tax Board, a review of those books and records is
32 appropriate or necessary in the best interests of the state.

33 (2) Notwithstanding Section 19542:

34 (A) Notify GO-Biz of a possible breach of the written agreement
35 by a taxpayer and provide detailed information regarding the basis
36 for that determination.

37 (B) Provide information to GO-Biz with respect to whether a
38 taxpayer is a “small business,” as defined in Section 23626.

39 (e) In the case where the credit allowed under this section
40 exceeds the “tax,” as defined in Section 23036, for a taxable year,

1 the excess credit may be carried over to reduce the “tax” in the
2 following taxable year, and succeeding five taxable years, if
3 necessary, until the credit has been exhausted.

4 (f) Any recapture, in whole or in part, of a credit approved by
5 the committee pursuant to Section 18410.2 shall be treated as a
6 mathematical error appearing on the return. Any amount of tax
7 resulting from that recapture shall be assessed by the Franchise
8 Tax Board in the same manner as provided by Section 19051. The
9 amount of tax resulting from the recapture shall be added to the
10 tax otherwise due by the taxpayer for the taxable year in which
11 the committee’s recapture determination occurred.

12 (g) (1) The aggregate amount of credit that may be allocated
13 in any fiscal year pursuant to this section and Section 17059.2 shall
14 be an amount equal to the sum of subparagraphs (A), (B), and (C),
15 less the amount specified in subparagraphs (D) and ~~(E)~~: *(E), and*
16 *plus the amount specified in subparagraph (F):*

17 (A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal
18 year, one hundred fifty million dollars (\$150,000,000) for the
19 2014–15 fiscal year, and two hundred million dollars
20 (\$200,000,000) for each fiscal year from 2015–16 to 2017–18,
21 inclusive.

22 (B) The unallocated credit amount, if any, from the preceding
23 fiscal year.

24 (C) The amount of any previously allocated credits that have
25 been recaptured.

26 (D) The amount estimated by the Director of Finance, in
27 consultation with the Franchise Tax Board and the State Board of
28 Equalization, to be necessary to limit the aggregation of the
29 estimated amount of exemptions claimed pursuant to Section
30 6377.1 and of the amounts estimated to be claimed pursuant to
31 this section and Sections 17053.73, 17059.2, and 23626 to no more
32 than seven hundred fifty million dollars (\$750,000,000) for either
33 the current fiscal year or the next fiscal year.

34 (i) The Director of Finance shall notify the Chairperson of the
35 Joint Legislative Budget Committee of the estimated annual
36 allocation authorized by this paragraph. Any allocation pursuant
37 to these provisions shall be made no sooner than 30 days after
38 written notification has been provided to the Chairperson of the
39 Joint Legislative Budget Committee and the chairpersons of the
40 committees of each house of the Legislature that consider

1 appropriation, or not sooner than whatever lesser time the
2 Chairperson of the Joint Legislative Budget Committee, or his or
3 her designee, may determine.

4 (ii) In no event shall the amount estimated in this subparagraph
5 be less than zero dollars (\$0).

6 (E) (i) For the 2015–16 fiscal year and each fiscal year
7 thereafter, the aggregate amount of credit that may be allocated
8 pursuant to this section and Section 17059.2 shall be reduced by
9 the amount of credit allowed to all qualified taxpayers pursuant to
10 subparagraph (A) or subparagraph (B) of paragraph (1) of
11 subdivision (c) of Section 23636.

12 (ii) If the amount available per fiscal year pursuant to this section
13 and Section 17059.2 is less than the aggregate amount allowed to
14 qualified taxpayers pursuant to subparagraph (A) or subparagraph
15 (B) of paragraph (1) of subdivision (c) of Section 23636, the
16 aggregate amount allowed pursuant to Section 23636 shall not be
17 reduced and, in addition to the reduction required by clause (i),
18 the aggregate amount available pursuant to this section and Section
19 17059.2 for the next fiscal year shall be reduced by the amount of
20 that deficit.

21 (iii) It is the intent of the Legislature that the reductions specified
22 in this subparagraph of the aggregate amount of credit that may
23 be allocated pursuant to this section and Section 17059.2 shall
24 continue if the repeal dates of the credits allowed by this section
25 and Section 17059.2 are removed or extended.

26 (F) *In addition to the other amounts determined pursuant to*
27 *this paragraph, the Director of Finance may increase the aggregate*
28 *amount by up to twenty-five million dollars (\$25,000,000) per year*
29 *through 2019. The amount of any increase made pursuant to this*
30 *subparagraph, when combined with any increase made pursuant*
31 *to subparagraph (F) of paragraph (1) of subdivision (g) of Section*
32 *17059.2, shall not exceed twenty-five million dollars (\$25,000,000)*
33 *per year through 2019.*

34 (G) *It is the intent of the Legislature that the Director of Finance*
35 *increase the aggregate amount under subparagraph (F) in order*
36 *to mitigate the reduction of the amount available due to the credit*
37 *allowed to all qualified taxpayers pursuant to subparagraph (A)*
38 *or (B) of paragraph (1) of subdivision (c).*

39 (2) Each fiscal year, 25 percent of the aggregate amount of the
40 credit that may be allocated pursuant to this section and Section

1 17059.2 shall be reserved for “small business,” as defined in
2 Section 17053.73 or 23626.

3 (3) Each fiscal year, no more than 20 percent of the aggregate
4 amount of the credit that shall be allocated pursuant to this section
5 may be allocated to any one taxpayer.

6 (h) GO-Biz may prescribe rules and regulations as necessary to
7 carry out the purposes of this section. Any rule or regulation
8 prescribed pursuant to this section may be by adoption of an
9 emergency regulation in accordance with Chapter 3.5 (commencing
10 with Section 11340) of Part 1 of Division 3 of Title 2 of the
11 Government Code.

12 (i) (1) A written agreement between GO-Biz and a taxpayer
13 with respect to the credit authorized by this section shall not
14 restrict, broaden, or otherwise alter the ability of the taxpayer to
15 assign that credit or any portion thereof in accordance with Section
16 23663.

17 (2) A written agreement between GO-Biz and a taxpayer with
18 respect to the credit authorized by this section must comply with
19 existing law on the date the agreement is executed.

20 (j) (1) Upon the effective date of this section, the Department
21 of Finance shall estimate the total dollar amount of credits that
22 will be claimed under this section with respect to each fiscal year
23 from the 2013–14 fiscal year to the 2024–25 fiscal year, inclusive.

24 (2) The Franchise Tax Board shall annually provide to the Joint
25 Legislative Budget Committee, by no later than March 1, a report
26 of the total dollar amount of the credits claimed under this section
27 with respect to the relevant fiscal year. The report shall compare
28 the total dollar amount of credits claimed under this section with
29 respect to that fiscal year with the department’s estimate with
30 respect to that same fiscal year. If the total dollar amount of credits
31 claimed for the fiscal year is less than the estimate for that fiscal
32 year, the report shall identify options for increasing annual claims
33 of the credit so as to meet estimated amounts.

34 (k) This section is repealed on December 1, 2025.

35 *SEC. 3. This act provides for a tax levy within the meaning of*
36 *Article IV of the Constitution and shall go into immediate effect.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, July 3, 2014. (JR11)**

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